

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ANDREAS WEIGL, BERND HERRMANN, ULRICH KOELLE,  
HELMUT RANDOLL, and ROBERT HUGEL

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Appeal No. 2000-0341  
Application No. 08/849,169

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HEARD: July 10, 2001

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Before KRASS, LALL, and BLANKENSHIP, Administrative Patent Judges.

LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 3 and 4. Claims 1 to 2 and 5 to 10 have been indicated as allowed by the Examiner per page 4 of the Examiner's answer.

The disclosed invention is directed to an anti-theft system for motor vehicles. A blocking control device controls the release or blocking of a motor vehicle device. The motor

vehicle device itself can be any control device in the vehicle which, if blocked, prevents continued operation of the vehicle, or prevents it from being started. The blocking control device is connected to a transmission/receiving device and is also connected to a vehicle use parameter acquisition device. The parameter device may use a vehicle use parameter, such as the distance traveled. The blocking control device releases the old information when the vehicle use parameter has reached its predetermined value. If new release information from a station outside of the car is received, the blocking control device resets the vehicle use parameter back to its starting value. The operation of the vehicle is then permitted to continue in normal manner. However, if new release information from the external station is not present when the vehicle use parameter has reached its predetermined value, the blocking control device either limits the use of the vehicle during an overtime period, or blocks the motor control device entirely. Further understanding of the invention can be obtained by the following claim.

3<sup>1</sup>. A theft protection system for a motor vehicle, comprising:

a motor control device (31) in the vehicle;

a blocking control device (30) in the vehicle, for releasing the motor control device (31);

a transmitting/receiving device (21) that is connected to the blocking control device;

a device (32) for detecting a vehicle use parameter (T,S),  
which is connected to the blocking control device (30); and

a locally fixed second transmitting/receiving device (11) that does not belong to the vehicle;

wherein the blocking control device (30) requests the feeding of a new release information from the locally fixed first transmitting/receiving device (11) via the second transmitting/receiving device (21) on the vehicle itself once the detected vehicle use parameter (T,S) reaches a predetermined limit value and limits the use of the vehicle if a new release information does not arrive.

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<sup>1</sup> The amendment after the final rejection, Paper No. 10, has been approved for entry by the Examiner; however, it has not been physically entered into the claims. We leave it to the Examiner to assure the entry of this amendment into the claim.

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The Examiner relies on the following references<sup>2</sup>:

Keating et al. (Keating) 21, 1989	4,805,722	Feb.
Uekusa (Japan) 9, 1986	61-150853	July

Claims 3 and 4 stand rejected under 35 U.S.C. § 103 over  
Keating in view of Uekusa.

Rather than repeat the arguments of Appellants and the  
Examiner, we make reference to the briefs<sup>3</sup> and the answer for  
their respective details thereof.

#### OPINION

We have considered the rejections advanced by the  
Examiner and the supporting arguments. We have, likewise,  
reviewed the Appellants' arguments set forth in the briefs.

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<sup>2</sup> The Examiner lists three other references mainly U.S.  
Patent No. 5,486,806 to Firari et al., U.S. Patent No.  
5,519,260 to Washington, and U.S. Patent No. 5,520,780 to  
Norris et al.; however these references do not form a part  
of the rejection. Therefore, they are not considered in our  
decision.

<sup>3</sup> A reply brief was filed as Paper No. 13 and its entry  
was noted by the Examiner without any further response, see  
Paper  
No. 14.

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We affirm.

In our analysis, we are guided by the general proposition that in an appeal involving a rejection under 35 U.S.C. § 103, an examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined

on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). We are further guided by the precedent of our reviewing court that the limitations from the disclosure are not to be imported into the claims. In re Lundberg, 244 F.2d 543, 113 USPQ 530 (CCPA 1957); In re Queener, 796 F.2d 461, 230 USPQ 438 (Fed. Cir. 1986). We also note that the arguments not made separately for any individual claim or claims are considered waived. See 37 CFR § 1.192(a)

and (c). In re Baxter Travenol Labs., 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991) ("It is not the function of that court to examine the claims in greater detail than argued by an appellant, looking for nonobviousness distinctions over the prior art."); In re Wiechert, 370 F.2d 927, 936, 152 USPQ 247, 254 (CCPA 1967)("This court has uniformly followed the sound rule that an issue raised below which is not argued in that court, even if it has been properly brought here by reason of appeal is regarded as abandoned and will not be considered. It is our function as a court to decide disputed issues, not to create them.").

The Examiner's rejection is laid out on pages 3 and 4 of the Examiner's answer. On page 9 of the brief and page 2 of the reply brief, Appellants argue that the combination of Keating and Uekusa is the result of impermissible hindsight. We disagree. Keating is related to an anti-theft system for a motor vehicle just like Appellants' invention is, and it too blocks the operation of the motor vehicle if the operation of the vehicle is outside of the authorized operation date and time, see abstract. In Keating, the communication between the vehicle-mounted card reader 22 and the authorizing external

unit 12 takes place by the actual physical presence of the card 14B, that is, the card is authorized by computer or external unit 12 and then is presented to the reader 12 for a new authorization for the operation of the vehicle. Thus, the card has to be reauthorized by the external unit 12 physically before a new authorized operation is reset. According to the Examiner, this communication between external unit 12 and the vehicle-mounted card reader unit 22 is replaced by a wireless communication as taught by Uekusa. We note that the Uekusa system does provide a teaching for communicating between a mobile car and a stationary base station via a wireless system. We do not find any impropriety, or impermissible hindsight, in using the wireless communication concept of Uekusa to substitute for the physical communication between computer 12 and card reader 22 of Keating.

Appellants also argue, brief at page 10 that "Uekusa does not use radio communication for this purpose [i.e., for the purpose of using wireless communication with a base station so that new release information could be updated without the user being at the site of the renewal]." We are of the view that Appellants are looking for a specific and explicit teaching

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for the suggested combination. However, while there must be some teaching, reason, suggestion, or motivation to combine existing elements to produce the claimed device, it is not necessary that the cited references or prior art specifically suggest making the combination (see B.F. Goodrich Co. v. Aircraft Braking Sys. Corp., 72 F.3d 1577, 1583, 37 USPQ2d 1314, 1319 (Fed. Cir. 1996) and In re Nilssen, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988)) as appellant would apparently have us believe. Rather, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 415, 208 USPQ 871, 881 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

Here, Uekusa teaches a wireless means of communication between a mobile vehicle and a base station. Furthermore, Uekusa is also concerned with information authorizing the



proper use of the vehicle. In our view, to replace the physical communication in Keating between the external computer 12 and the on-vehicle card reader unit 22 by the wireless communication of Uekusa would have been obvious for an artisan because it would have enabled the operator of the vehicle to get the authorization from the base station 12 without a time consuming and inconvenient trip back to the base station.

We would further like to add that the Keating reference teaches all the elements which are claimed in claim 3 except for the wireless communication, contrary to the arguments by Appellants. For example, Appellants argue, reply brief at page 3, that "claim 3 terminates in a 'wherein' clause which specifies .... In a Keating system that has been modified to accommodate requests for lease extensions by radio, in contrast, the renter could request an extension whenever he or she made a conscience, volitional decision to do so, without regard to a predetermined limit value for a vehicle use parameter." We are not persuaded by this argument. Whereas it is true that the operator of the vehicle could make a volitional decision and obtain a reauthorization on the car

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before the end of the prior authorized time, it does not exclude the situation where the operator can wait until the prior authorized operation time has expired and then have the reauthorization granted by the suggested wireless communication.

Therefore, we sustain the obviousness rejection of claim 3 and 4 (claim 4 has not be argued separately). Accordingly, the decision of the Examiner rejecting claims 3 and 4 under 35 U.S.C.

§ 103 over Keating in view of Uekusa is affirmed.

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No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

AFFIRMED

ERROL A. KRASS	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
PARSHOTAM S. LALL	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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HOWARD B. BLANKENSHIP	)	
Administrative Patent Judge	)	

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